IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(C).No. 29865 of 2004(E)

PETITIONER:

PREMIUM FERRO ALLOYS LIMITED,
IST FLOOR, RAVIPURAM ROAD, COCHIN-16,
REP.BY ITS MANAGING DIRECTOR, S.S.AGARWALL.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.C.SANKUNNY

RESPONDENTS:
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1. ADDITIONAL SALES TAX OFFICER,
SECOND CIRCLE, ERNAKULAM.

2. COMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY G.P. SRI. K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF ORDER UNDER SECTION 45a DATED 20.6.2003 OF THE FIRST RESPONDENT.

EXT.P2 TRUE COPY OF ORDER NO. STRP 210/03 DATED 19.1.2004 OF DEPUTY COMMISSIONER, COMMERCIAL TAXES, ERNAKULAM.

EXT.P3 TRUE COPY OF 2ND REVISION PETITION FILED BEFORE THE 2ND RESPONDENT.

EXT.P4 TRUE COPY OF ORDER PASSED BY 2ND RESPONDENT DATED 13.8.2004

EXT.P5 TRUE COPY OF INVOICE NO. 0580 DSATED 30.3.2003

EXT.P6 TRUE COPY OF MONTHLY RETURN FOR MARCH 2003

EXT.P7 TRUE COPY OF ANNUAL RETURN

EXT.P8 TRUE COPY OF LETTER SHOWING DETAILS OF PAYMENT TO KSEB DATED 31.3.2003

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 29865 OF 2004

Dated this the 21st day of November, 2007

JUDGMENT

Heard counsel for the petitioner and Government Pleader. Petitioner is challenging Ext.P4 whereunder the Commissioner has modified the penalty levied under Section 45A of the Act for short payment of advance tax. As against liability to pay advance tax of Rs. 4,03,171/- before 31.3.2003, petitioner remitted only Rs. 1 lakh. However, on facts, it was found that petitioner did not even remit the collected tax. Even though Officer levied penalty at double the amount of tax, the Commissioner reduced it to equal amount of tax. Counsel for the petitioner contended that short payment of advance tax is not evasion of tax and therefore penalty is excessive and arbitrary. However, Government Pleader referred to decision of this Court in (2003) 3 K.L.T. S.N. 140 (case No. 180) (W.A.No. 2979 of 2002 dated 26.9.2003), whereunder this Court has held that non-payment of advance tax is violation of the provisions of the Act. The purpose of provision for payment of advance tax is to ensure that tax is paid

before the end of the financial year and delay in payment defeats the object of the provision. Since liability is admitted, it makes no difference whether tax is collected or not by the petitioner. Even though penalty is leviable and the argument to the contrary is not tenable, I find some force in the contention of the petitioner that quantum of penalty at equal the amount of tax is excessive and arbitrary. Petitioner's financial difficulties to some extent is appreciated by the Commissioner in Ext.P4 order. Counsel also submitted that petitioner has remitted Rs. 2 lakhs out of the penalty amount in terms of interim orders of this Court. It is also clear from Ext.P4 that along with final return, petitioner has remitted the tax amount. In the circumstances, I allow the W.P. partly by modifying Ext.P4 to the extent of reducing the penalty to Rs. 2 lakhs and by cancelling the balance penalty sustained by Ext.P4.

(C.N. RAMACHANDRAN NAIR)
Judge